



**Multiple Award Schedule (MAS) Program
Section 876
Increasing Competition at the Task Order Level**

**White Paper
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Introduction and Decision	3
Background	3
Section 876 Analysis	5
Options Considered	7
OGP Listening Sessions	12
Additional Findings and Opportunities	17

Introduction and Decision

To determine if the Section 876 exception, *Increasing Competition at the Task Order Level*, of FY19 National Defense Authorization Act (NDAA) should be implemented into the Multiple Award Schedule (MAS) Program, GSA's MAS Program Management Office (PMO) initiated a discovery process to collect feedback from customers, industry partners, and the acquisition workforce.

This was accomplished through an enterprise-wide integrated project team (IPT) who was tasked with collecting and reviewing all stakeholder input to provide a recommendation regarding the possibility of implementation.

The GSA Federal Acquisition Service (FAS) decided to **NOT** implement Section 876 into the MAS Program.

Recommendation

Option 1: Status Quo, No implementation of Section 876 within the MAS Program.

Section 876 (unpriced services) should **not** be implemented into the Multiple Award Schedule (MAS) Program. Customer agencies and industry partners rely strongly on the benefits of the MAS Program, specifically its pre-competed pricing. By maintaining the current state, GSA will not alienate many of its most valuable customers and industry partners.

Background

The FY17 NDAA authorized certain multiple-award task order contracts issued by the Department of Defense (DoD), National Aeronautics and Space Administration (NASA), and the Coast Guard to be awarded with no pricing at the contract level. Instead, pricing evaluation must take place at the order level.

In 2018, GSA sought to have the same authority for civilian contracting agencies via a legislative proposal. Consequently, Section 876, *Increasing Competition at the Task Order Level*, was made part of the FY19 NDAA ([Pub.L 115-232](#)), which became law in August 2018 ([See Full text of section 876](#)).

Section 876 gives GSA the discretion to remove price as an evaluation factor in certain indefinite-delivery, indefinite-quantity (IDIQ) contracts and Federal Supply Schedule (FSS) contracts provided that:

- (1) the agency intends to make a contract award to each qualifying offeror,
- (2) task or delivery orders will be based on hourly rates, and
- (3) competition takes place at the order level.

To be eligible for award of a contract a “qualifying offeror” must be a responsible source; submit a proposal that conforms to the requirements of the solicitation; meet all technical requirements; and be otherwise eligible for award.

MAS Program

The GSA MAS Program serves as the catalyst for over \$35 billion in federal spending annually, helping to meet procurement needs for eligible users. These long-term, IDIQ contracts assist customers with procuring a vast array of commercial products and services directly from contractors. Procurement of services represents ~60% of MAS Program spend.

Through the MAS Program, GSA negotiates contracts with responsible, qualified contractors for services and/or products to be delivered directly to the buying agency. MAS contracts contain robust terms and conditions and negotiated, fair and reasonable fixed-price rates.

The MAS Program enables compliance with federal procurement statutes¹ and regulations, as well as environmental and socioeconomic requirements, providing a streamlined process for obtaining products and services. Many of the contract terms and conditions flow down to the task order level, which simplifies the customer ordering process.

¹ The core statutes that prescribe competition as the default requirement of federal procurement, 10 USC 2302(2)(C) and 41 USC 3302, expressly declare the MAS Program to be -compliant with the Competition in Contracting Act (CICA) (with conditions that are met in the programs as it now stands).

The MAS Program provides fast, flexible, cost-effective procurement solutions that allow users to meet acquisition challenges for acquiring services while achieving their mission. It brings tremendous value to customer agencies every day, and **pricing is a key part of the value proposition** of MAS.

Integrated Project Team (IPT)

GSA established an IPT to review the implementation of Section 876 for the MAS Program. The IPT included representation from all FAS Portfolios, MAS PMO, MAS Acquisition Centers, FAS Integrator Offices, GSA Office of Governmentwide Policy, Systems, Legal, and Inspector General. The IPT established a stakeholder team, a policy and regulatory team, and a systems team.

The purpose of the IPT was to determine if and how to implement unpriced services into the MAS Program.

The IPT goals included:

- Identify and address concerns of all stakeholders
- Identify the regulatory and policy changes required
- Identify downstream systems changes

Stakeholder engagement consisted of:

- Office of Governmentwide Policy (OGP) Listening Sessions
- Assisted Acquisition Services Survey
- FAS Workforce Survey
- Customer Agency Interviews
- Industry Interviews

Section 876 Analysis

During the review of the stakeholder input, the IPT determined that the MAS Program and the MAS stakeholders did not have the foundation or desire to implement Section 876. Overarching themes were found in the interviews with all stakeholders.

Customer agencies expressed deep concerns related to the movement of the pricing negotiation burden from the contract level to the order level. Most stated that this would

remove the value that MAS contracts provide them, including GSA's Assisted Acquisition Service (AAS). AAS indicated that contract-level pricing was extremely important in providing solutions to their customer agency clients.

Industry stakeholders were split. Some acknowledged time savings while others expressed concerns related to their own internal market research and increased procurement acquisition lead time (PALT) at the order level.

Further, three overarching questions kept arising during the IPT interviews. 1) Can a MAS product have both a priced and unpriced SIN? 2) Will competition really be increased at the order level? and 3) What is the difference between MAS and non-MAS IDIQs?

1) On the issue of priced and unpriced SINs the IPT determined that while in theory it would be possible to write ordering procedures to allow for such a scenario, it is not practical and would create confusion at the order level. Buyers would be dealing with two sets of ordering procedures, one for priced services under FAR 8.405-2, and one for unpriced services under the yet-to-be-determined GSAR ordering procedures section.

This would be confusing, problematic, and cumbersome for buyers, which they stated repeatedly during live interviews. It would increase the complexity of task order awards against MAS, slow the procurement process at the order level, and increase protest risk.

2) As noted by the title of the section, the premise of Section 876 *Increasing Competition at the Task Order Level* assumes that more contractors at the IDIQ contract level will result in greater competition at the order level. The IPT found that this has not historically been confirmed through the MAS Program or other governmentwide contract vehicles.

Adding contractors to a pool, Special Item Number (SIN), etc. on a contract vehicle does not guarantee increased competition. Under MAS, the average number of quotes per RFQ through GSA e-Buy is three (3)², even under those MAS SINs that have hundreds and even thousands of contractors.

² Source: Monthly eBuy Statistics Report from the GSA Office of IT.

Contractors make bid/no-bid decisions based on a variety of factors including business intelligence informing them who will compete for the work, the likelihood of success, the availability of bid and proposal money, the expertise of the firm, and the ability to be competitive.

While the barrier to entry to the MAS Program would be lower if pricing was not negotiated at the contract level, it could potentially lead to more companies coming into the MAS Program who would not achieve success. Currently, nearly half of MAS contracts have low (less than \$25k per year) or no sales, which could increase if Section 876 were to be adopted into MAS.

Companies who are awarded a MAS contract are expected to be able to perform and have a marketing and sales plan. We often see less experienced companies who do not fully understand how to prepare successful pricing structures when competing for work. In order to promote equity, industry partners, including small and disadvantaged businesses, are better served by having GSA-negotiated rates at the contract level.

Further, for all service orders over the micro-purchase threshold, competition is required under the FAR subpart 8.4 ordering procedures, thus it is uncertain if Section 876 would lead to any additional competition requirements at the task order level.

3) When Discussing MAS and non-MAS contracts, an important question to be considered is why it is more difficult to implement Section 876 under MAS than it is under non-MAS IDIQs such as ASTRO and the planned Polaris contracts.

The difference lies in the structure and execution of the contract vehicles. Non-MAS IDIQs using the Section 876 authority are built from the ground up as unpriced contracts. Specific ordering procedures can easily be established at the contract level without any additional changes to regulations. The entire contract vehicle would be unpriced, therefore there is no issue of having both unpriced and priced services on a contract vehicle and all stakeholders understand the process from the outset.

In contrast, MAS contracts are based upon existing regulatory requirements that expect pricing to be set at the contract level and have decades of history, industry expectations,

bid protest jurisprudence, and other downstream effects that all rest upon the same assumption and will be difficult to unravel.

Options Considered

Option 1: Status Quo, No implementation of Section 876 within the MAS Program.

Summary

Maintain the current best value, fair and reasonable determination for pricing at the contract level. Through its discovery and investigation, the IPT has determined that adequate support does not exist for the implementation of Section 876 into the MAS Program. At this time, implementation is not in the best interest of GSA, its customers, or its industry partners.

Pros

- Preserves the current value of the MAS Program. Throughout GSA's marketing material, websites, value propositions, and customer interactions the agency strongly promotes fair and reasonable price determination under MAS as a major benefit to users.
- Maintains pricing related benefits:
 - Fair and reasonable pricing at the contract level.³
 - Competitive market-based pricing that leverages the buying power of the federal government, with the ability to negotiate further discounts at the order level.
 - Eliminates the need to conduct a formal, negotiated procurement, as required under FAR Part 15, at the order level. FAR 15 does not apply to orders under MAS contracts and there is no need to conduct a price analysis on each labor rate (GSA established rates).
 - Faster response times and enhanced competition for ordering activities. Use of MAS contracts greatly reduces the customer's procurement acquisition lead times (PALT).
- Some industry partners are in favor of keeping pricing at the contract level.

³ GSA Schedule contract prices have been determined to be fair and reasonable (see FAR 8.404(d)).

Cons

- GSA's acquisition workforce will continue to negotiate pricing at the contract level and will see no reduction in their workload.
- Some industry partners will be dissatisfied with this option.

Risks

- Certain industry partners will be dissatisfied with this option. Early talks with industry during the Office of Government-wide Policy (OGP) listening sessions indicated the risk that there may be some level of industry backlash as a result of not implementing Section 876. While the IPT acknowledges that compared to customer agencies more of our industry partners are open to implementing Section 876, this initial discovery phase did not produce any solid evidence that industry would turn away from MAS if Section 876 was not implemented. Instead the opposite was stated by some industry partners during the IPT's interview. Some voiced the fear that implementation of Section 876 would put more burden on customer agencies and deter them from using the MAS Program.

In addition, while some stated that they would rather be able to develop pricing at the order level, the majority of industry partners interviewed by the IPT acknowledged that there were benefits to having pricing at the contract level.

Costs: Not Applicable

Option 2: Partial Implementation of Section 876

Summary

Implement Section 876 under certain SINS within the MAS Program where it would make sense. The IPT considered this approach and identified five (5) SINS with spend between \$50M and \$250M annually as candidates for implementation.

Pros

- Allows for a phased approach.
- Allows each FAS Portfolio to determine which SINS to implement.

- Somewhat satisfies certain industry partners who are advocating for implementation.

Cons

- Customer agencies do not want unpriced MAS contracts.
- Shifting the burden of doing fair and reasonable pricing determinations to the order level will increase customer agency PALT and negatively impact customer satisfaction with the MAS Program.
- Implementing Section 876 would result in two sets of ordering procedures, one at FAR 8.405-2 for priced contracts/SINs and the yet-to-be-written GSAR procedures for unpriced contracts/SINs.
- Customers do not want to have two sets of procedures for MAS contracts.

Risks

- Added burden and different pricing structures could lead to customer agencies discontinuing use of the MAS Program and creating their own contract vehicles.
 - Customers stated how much they valued the streamlining and ease provided by MAS and questioned what other value MAS would provide if fair and reasonable price determination is taken away. Essentially, customers shared that if they have to put in that level of effort, they see no benefit to using MAS and will be more motivated to create internal IDIQs. This would contradict the Office of Management and Budget's (OMB) guidance under Category Management of having fewer contract vehicles across the federal government.
- Increased complexity at the order level could lead to an increase in order-level protests.
- Does not result in increased competition.
- Small businesses struggle to compete with no pricing to determine marketability.
- Increase in cost avoidance that other contract vehicles maintain by using the MAS contract as the pre-award review. Such as state and local contracts CMAS or TEXMAS.
- Alienating customer agencies and causing a decrease in sales business volume through the MAS contract, leading to a decrease in GSA revenue.

- Dissatisfaction with the Industrial Funding Fee rate.

Costs

- Unknown systems costs based on supplier needs and requirements and costs for eTools to identify contracts/SINs where prices are not negotiated.

Option 3: Implementation of Section 876 for all Services Under the MAS Program

Summary

Implement Section 876 for all non-commodity based services throughout the MAS contract vehicle by moving all pricing negotiations to the order level.

Pros

- Aligns MAS with other unpriced vehicles.
- Increases access to the MAS Program.
- Reduces burden for the contractor and MAS contracting officer, potentially reducing PALT at the contract level.
- Satisfies certain industry partners who are advocating for implementation.

Cons

- Removes streamlined buying power at the order level.
- Loss of customer agencies who use the MAS Program.
- Increased PALT and burden at the order level. Shifting the burden of doing fair and reasonable pricing determinations at the order level will increase customer PALT and negatively impact customer satisfaction with the MAS Program.
 - Customers told us that although they could conduct fair and reasonable pricing determinations at the order level, that the lack of pricing will slow them down and increase PALT.
- Decreased value for the MAS Program as perceived by customer agencies.

- Establishes two sets of ordering procedures and requires customers to create additional oversight and training for their workforce⁴.
- Loss of market research ability customers and contractors use, in support of other contract vehicles and orders, to determine internal pricing estimates in comparison to scope of the order.

Risks

- Added burden and different pricing structures could lead to customers discontinuing use of the MAS Program and creating their own contract vehicles.
- Increased complexity at the order level could lead to an increase in order-level protests.
- Does not result in increased competition.
- Small businesses struggle to compete with no pricing to determine marketability.
- Increase in cost avoidance that other contract vehicles maintain by using the MAS contract as the pre-award review. Such as state and local contracts CMAS or TEXMAS.
- Decrease in business volume through the MAS contract leading to a decrease in revenue for the MAS Program.
- Dissatisfaction with the Industrial Funding Fee rate.

Costs

- Unknown systems costs based on supplier needs and requirements.
- Unknown systems costs for eTools to identify contracts/SINs where prices are not negotiated.

⁴ “We heavily train our employees to use GSA Schedules. One of the first things they are taught is to buy from GSA. If we have to train them in another way it would require more time and resources than is currently being used.”

OGP Listening Sessions

GSA's Office of Governmentwide Policy (OGP) conducted listening sessions as follows:

- **Session 1** - October 20, 2020 – Christopher Yukins, Professor of Government Contracts Law, The George Washington University School of Law
- **Session 2** - October 27, 2020 – Lorraine Campos, Partner, Crowell & Moring & Elizabeth Sullivan Vice President, Government Relations, Madison Services Group, Inc.
- **Session 3** – November 3, 2020 – David Drabkin, Principal, Drabkin and Associates, LLC & Administrator, Council of Defense and Space Industry Associations & Jonathan Aronie, Partner, Sheppard Mullin
- **Session 4** – November 9, 2020 – Alan Chvotkin, Executive Vice President & Counsel, Professional Services Council
- **Session 5** – November 17, 2020 – Megan Petersen, Senior Director, Public Sector Policy & Counsel, Information Technology Industry Council & Jim Williams, Partner, Schambach & Williams Consulting, LLC.
- **Session 6** - December 2, 2020 – Roger Waldron, President, The Coalition for Government Procurement

Several GSA stakeholders also participated in these sessions to including Jeffrey Koses, GSA Senior Procurement Executive, William Clark, Director, GSA Office of Government-wide Acquisition Policy, Stephanie Shutt, Director of the MAS Program Office, Mark Lee, Assistant Commissioner for FAS, and Nicholas West, Acting Director, Office of GSA Acquisition Policy, Integrity & Workforce.

The following 14 points are taken from the OGP listening sessions conducted during Fall 2020. Each point is accompanied by an IPT response.

1. Contractors support the implementation of Section 876 and GSA should embrace it.

- **IPT Response:** Prior to the work of this IPT, GSA had not heard from customer agencies on this topic. The IPT received strong and overwhelming pushback from customer agencies on implementing Section 876. While some industry representatives from the listening sessions supported implementation of Section 876, it is important to note that other industry partners interviewed by the IPT

offered alternative viewpoints. Industry partners and associations as a whole are not unanimous on the issue.

2. Unintended consequences could include disincentivizing competition at the task order level if there's too much of it, and contract-level savings could be offset by increased costs to bid on task orders.

- **IPT Reponse:** The IPT points out elsewhere in this document that more contractors on IDIQs does not automatically equate to more competition at the task order level. In fact, the more likely consequence is that customers will find other contract vehicles if pricing is removed from MAS contracts.

3. Section 876 could be beneficial for cooperative purchasing because competitors are now just completing a responsibility or qualification assessment, but could present challenges to state and local governments having to negotiate labor rates at the time of task order solicitation.

- **IPT Reponse:** Buyers at all levels, including state and local governments through the cooperative purchasing program, rely on MAS pricing. Without pricing, the value of MAS to state and local government's would be diminished since they do not follow FAR ordering procedures and are not concerned with the FAR compliance aspects of using a MAS contract. Pricing is the single most important value MAS offers to state and local buyers.

Additionally, it is very likely that state and local buyers do not have experience in unpriced contracts, which would limit their usage of MAS if the contracts were unpriced. State and local sales under MAS is ~\$1B per year and this spend could be in jeopardy without pricing at the contract level.

4. Section 876 will increase small business participation in GSA's MAS Program.

- **IPT Reponse:** While it is true that the barrier of entry would be lower at the contract level since contractors would not have to negotiate pricing, it may be more difficult and burdensome for small businesses, including disadvantaged businesses, to prepare a full-blown pricing proposal for each order. In essence

the barrier is shifted to the task order level. Small businesses benefit greatly from having to only negotiate fair and reasonable prices one time at the contract level, it saves them time and resources.

5. The majority of industry said to implement Section 876 all at once. If a phased approach is taken, industry said to implement on selected Schedules/Categories/SINs first, then potentially implement Section 876 during contract option periods roll over.

- **IPT Reponse:** The IPT discussed implementation and the consensus was that if GSA were to implement Section 876, it would need to be at the SIN level with a phased approach. GSA would start with SINs with sales up to \$250M annually and phase in an entire SIN before moving to additional SINs. This approach would allow for both GSA and contractors to make an orderly transition to unpriced contracts, while allowing customers to acclimate on a SIN by SIN basis.

6. There was split industry support for whether or not to use a pilot program or a prices-paid portal to implement Section 876.

- **IPT Reponse:** The work being done by the Digital Innovation Division on the Digital Experience (DX) project to create a pricing tool will support Section 876 implementation across all of GSA. If a decision were made to implement Section 876 into MAS, it is recommended that it be done as a phased approach at the SIN level; neither the IPT nor the MAS PMO supports a pilot. However, implementation of Section 876 for MAS is not recommended.

7. Industry provided unanimous support for getting rid of the Price Reduction Clause (PRC) and the price adjustment clause (sic) because they are major barriers to entry, especially for small businesses.

- **IPT Reponse:** The IPT discovered this to be true during all of its discussions with industry. Please see item 1 under the “Additional Findings and Opportunities” section.

8. GSA should not request pricing at the Schedule contract level where Section 876 applies. Focus at the Schedule contract level should be reserved for evaluation factors such as corporate experience, technical capability, and past performance.

- **IPT Reponse:** The IPT disagrees based on its findings after talking to customer agencies. Pricing is extremely important to customers and not having pricing available at the contract level will ultimately harm the MAS Program and likely cause decreased business volume over time.

9. Keep it simple. There doesn't need to be two different sets of contracts, one with priced and one with unpriced, one with products and one with services.

- **IPT Reponse:** There is no authority to implement unpriced contracts for products. Section 876 authority applies to services only. The IPT agrees that GSA should keep it simple, and the best way to do that is by keeping pricing at the contract level across the board. Two sets of ordering procedures and the likelihood that requirements will cross-over both priced and unpriced SINs makes it burdensome and confusing to buyers.

10. Section 876 authority can be used on fixed price contracts.

- **IPT Reponse:** The consensus of the IPT is that the statement is likely true as long as the fixed price contract is for services made up of the type that provide hourly rate support. However, since the recommendation is that GSA not implement Section 876, the IPT did not finalize the policy and regulatory implications of this issue.

11. There is support for controlling Section 876 implementation at the GSAR level and updating the FAR later.

- **IPT Reponse:** The IPT would agree with this approach if there were to be implementation, but it is not without risks and complexity as discussed in the "Options Considered" section of this document.

12. Education and outreach regarding GSA's implementation of Section 876 is needed for small businesses, people internal to GSA, the federal acquisition workforce, customer agencies, and the OIG.

- **IPT Response:** The IPT agrees with this statement. This issue arose several times during the course of the IPT's research activities.

13. Need implementation and communications plan, a specific point of contact, and clear measurement criteria to measure the success of Section 876.

- **IPT Response:** The IPT agrees with this statement.

14. There is a lack of transparency in the MAS Program, and the eBuy system should be made public.

- **IPT Response:** The IPT strongly disagrees with this statement. GSA Schedule contracts are among the most transparent contracts across government. GSA awarded pricing is required to be published and placed in either GSA eLibrary (services) or GSA Advantage (products). These platforms are open to the public and anyone can view a contractor's price-list at any time. Contractor quotations at the order level through GSA eBuy cannot be made public since they contain proprietary contractor business practices and order level pricing data in a competitive environment.

Additional Findings and Opportunities

During the IPT's discovery work, the following two pricing processes were found to impact more than the Section 876 implementation. The team determined that regardless of Section 876 decisions, future discovery projects should include:

- Review of the Price Reduction Clause and Commercial Sales Practice
- The ability to manage Service Contract Labor Standards (SCLS) wage determinations (WDs) and pricing at the task order level, rather than the contract level.

Questions?

Email maspmo@gsa.gov.